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SPECIAL NOTICE REGARDING THE FEDERAL CORPORATION TAX. The return of net income, otherwise known as the "Federal Corporation Tax Report," must be filed ON OR BEFORE MARCH 1st. Failure to file the return subjects the corporation to a penalty of not less than $1,000 nor more than $10,000, and an addition of 50% to the amount of the tax. An extension of thirty days in which to file the return may be obtained for good and sufficient reasons, but application for such extension must be made to the collector on or before March 1st.

The return must be filed by every corporation which has transacted business during any part of the year 1912 although its net income during the year may not have exceeded $5,000. Corporations organized during the year or going into liquidation during the year are nevertheless required to make the return.

Printed blanks on which to make the return are mailed to each corporation but failure to receive such blanks is no excuse for delinquency in making the return as there is no duty imposed upon the government to furnish corporations with such blanks. Blanks may be obtained from any internal revenue collector.

The return should be filed with the collector of internal revenue for the district in which the principal place of business of the corporation is located. "Principal place of business" is held to mean the principal office where the company keeps its books from which the return is prepared, and not necessarily the place where the operating plant is located.

A synopsis of decisions and regulations for guidance in making this return is published by the Commissioner of Internal Revenue. Copies may be obtained from any of our offices.

THE LIABILITY OF A PROMOTER for secret profits obtained by overvaluing property for which stock was issued was recently enforced by the Supreme Court of Indiana in the case of Parker v. Boyle, et. al., 99 N. E. 986. The Court said in part: "While a promoter, notwithstanding the fiduciary relation, may sell property to the company which he is promoting, he may do so lawfully only when he shall have provided an independent board of officers, in no wise under his control, and make a full disclosure to the corporation through them; or when he shall have made a full disclosure of all material facts to each original subscriber for shares of stock in the corporation; or when he shall have procured a ratification of the sale, after disclosing its circumstances, by vote of the stockholders of the completely established corporation."

FOREIGN CORPORATIONS IN KANSAS engaged solely in interstate commerce need not file the annual statement of condition required by Section 1358 of the General Statutes 1905 (now Section 1726, General Statutes 1909), nor obtain a certificate of such filing from the Secretary of State as a prerequisite to maintaining an action in the courts of the State. This doctrine was reiterated recently by the United States Supreme Court in the case of Buck Stove & Range Co. et al. v. Vickers et al., not yet reported. This precise question was presented in the case of International Text Book Co. v. Pigg, 217 U. S. 91, decided in April, 1910, on appeal from the Supreme Court of Kansas, but the Buck case had already been decided by the Kansas court before the Pigg case was argued in the U. S. Supreme Court, and so the appeal in the Buck case was allowed to take its course.

ISSUING STOCK FOR LABOR OR SERVICES has no express authorization in the statutes of New Jersey, except in the case of certain classes of construction companies. The Court of Errors and Appeals, however, in a recent case (The Vineland Grape Juice Co. v. D. Harry Chandler et als., 85 Atlantic, 213), announced that "It is settled in this State that stock may be issued in payment for work and labor done. Wetherbee vs. Baker, 8 Stew., 501, 512, and cases cited. Whether it may

be legally issued in anticipation of work and labor afterward to be performed, or services afterward to be rendered, is, at least, doubtful; but, conceding that the law does not permit, nevertheless, when it is issued, and the work and labor are subsequently performed, or the services rendered, and they are equal in value to the par of the stock which has been issued in prepayment therefor, it does not lie in the mouth of the corporation to attack the transaction in a court of equity, without at the same time rendering itself ready to pay to the parties to whom the stock was issued, or to their assigns, the full value of the work done or services rendered for its benefit."

THE CHARTER OF A NEW JERSEY CORPORATION, when two or more classes of stock are issued, contains a description of the different classes and the terms upon which the respective classes are created. A corporation having preferred and common stock declared a stock dividend and distributed the same among the common stockholders. A preferred stockholder brought action on the ground that he was entitled to share in this division of stock. The Court reasoned that the rights of the respective stockholders were measured by the certificate of incorporation and the law of New Jersey in force when the corporation was organized. By this certificate the preferred stockholders were entitled to a dividend of eight per cent. whether the stockholders received any dividend or not, and they were preferred as to capital as well as interest. The statute provided that preferred stockholders should in no event be liable for the debts of the corporation. In short, they were a privileged class whose status approached nearer to that of bondholders than of common stockholders. The burden of administration fell upon the common stockholders: if the corporation was unsuccessful the burden would fall on them; if successful they should receive the benefits. Therefore in the absence of express terms permitting them to share in additional profits, preferred stockholders were entitled to receive a dividend of eight per cent. and no more. The stock distributed as a dividend represented a surplus accumulation of profits which the directors might properly have divided annually among the common stockholders. The fund, therefore, belonged to them whether received in cash or certificates of stock representing cash. Justice Ward in a dissenting opinion states the general principle that all stockholders should share equally in net profits except as their relations are altered by statute or contract. If the preferred stockholders are given the right to receive a dividend of a fixed amount before the common stockholders get anything, the latter should next receive an equal amount, and then the surplus, if any, be equally divided between the preferred and common stockholders, unless the statute or charter expressly restricts the preferred stockholders to their preferred dividends and no more. (William W. Niles, etc., v. The Ludlow Valve Mfg. Co., United States Circuit Court of Appeals, Second Circuit, decided January, 1913;—not yet reported.)

AN INCORPORATOR SUBSCRIBING FOR STOCK is not relieved from payment of his subscription by the agreement of another person to pay into the corporate treasury the amount of such subscription, nor is it any defense that he never received a certificate of stock representing such shares, so long as he was recognized as a stockholder and acted as such at stockholders' meetings. (William H. Robson v. C. E. Fenniman Co., N. J. Court of Errors and Appeals, 85 Atl. 356.)

THE POWER TO HOLD AND VOTE THE STOCK OF OTHER CORPORATIONS granted to New Jersey corporations by the statutes of that state, was recently characterized by Governor Wilson as actually encouraging monopolies contrary to the policy of the Federal Government and the interests of the people. There seems to be a widespread impression that this statutory grant of power is peculiar to the New Jersey Act and a chief cause of its distinction as a law favorable to corporations.

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Such is not the case. The power was first given by statute in New Jersey in 1888, was again given in wording not materially different from that at present, in 1893, while the New Jersey corporation act as it now stands was not passed until 1896. Eighteen states altogether grant this power to corporations in express terms. Only three states seem expressly to prohibit the power and of nineteen states in which the statutes are silent, the power is very generally considered to exist and is frequently obtained by express provision in the charter or certificate of incorporation. The other states grant a limited power or a general power limited to certain classes of corporations.

FOREIGN CORPORATIONS IN NEW YORK having an office for the transaction of business in the State are required to keep therein a stock book containing an alphabetical list of stockholders, which shall be open to the inspection of stockholders, judgment creditors and state officers, during business hours, under a penalty of two hundred and fifty dollars for each refusal. Two recent cases have held that foreign corporations having only a transfer agent in this State are not "having an office for the transaction of business" in the state within the meaning of the law, and, therefore, not required by law to keep a stock book in the State for the inspection of stockholders and others. The fact the stock book is kept at the office of its transfer agent in this state does not confer any right on the stockholders to demand inspection thereof under the provisions of the law referred to. Walter Althause v. Guaranty Trust Company of New York, N. Y. Supreme Court—Appellate Term—137 N. Y. Supp. 945. Walter Wadsworth v. Equitable Trust Company of New York, Supreme Court—Appellate Division, First Department, Nov., 1912—not yet reported.

A PROXY was given by a stockholder owning a majority of the stock of an Ohio corporation by which he delegated to his agent the authority "to vote as my proxy at the annual meeting of the stockholders * * * or at any adjournment thereof, according to the number of votes that I should be entitled to vote if then personally present, for the following named persons, or any of them, as directors * * * hereby ratifying and confirming all that my said attorney and agent * * * shall lawfully do in the premises by virtue hereof." The meeting was not altogether harmonious and an effort was made by the one holding this proxy to adjourn it. The minority stockholders at the meeting refused to adjourn and proceeded to elect directors. An action was thereafter brought to remove the directors so elected. (State of Ohio, ex rel Arthur Van Epp, Prosecuting Attorney, v. H. P. McIntosh et. al.—Circuit Court of Ohio, Eighth Circuit. Opinion rendered Jan. 3, 1913. Not yet reported.) The Court held that the proxy authorized but one thing, namely, to vote for directors, directing how that vote should be cast, and was framed in such restricted terms that it did not confer any right on the agent to move to adjourn.

DIRECTORS MUST BE BONA-FIDE STOCKHOLDERS and not merely nominal holders of shares in order to be eligible to office in Ohio. The General Code of that state, Section 8661, provides in part that: "All directors and executive officers shall be holders of stock of the company for which they are chosen, in an amount to be fixed by the by-laws." This has been construed by the Supreme Court of that state to mean "bona-fide holders." In the case of State v. McIntosh, referred to in the preceding paragraph, the Court held that where shares had been transferred to certain persons immediately before an election at which election each of such transferees was chosen a director, it was a significant indication that the transfers were made on the books of the company for the purpose only of enabling the transferee to be eligible for office. None of the transferees would testify that they had actually purchased the stock, the only ones testifying showing by their testimony that their holding was only nominal. The Court thought itself justified in holding that the trans-

fers were made for the express and only purpose of enabling the transferees to hold the position of directors; that they were not "bona-fide holders" and therefore ineligible. The transfers were made from stock standing in the name of one who had no interest therein except as trustee for the pledgee of the true owner and the question was raised as to his right to sell any of the shares. The Court found it unnecessary, however, to pass on this question in order to reach its conclusions.

STOCK OF AN OKLAHOMA CORPORATION may be issued for "money, labor done or property actually received to the amount of the par value thereof" under Section 39 of Article 9 of the Constitution of that state. One Webster who had experience in building oil refineries agreed with others who proposed to form a corporation, to turn over to the corporation a certain process for refining gasoline and to give the corporation the use of his name and of his knowledge in erecting the proposed refinery, in consideration of the issue to him of $5,000 par value of the capital stock. After the refinery was erected, the corporation refused to deliver the stock. The process was one which the Plaintiff had installed in all the plants which he had ever erected and it had been successful. It was not patented nor was it a secret formula. Others knew of it and some had copied it. The Court decided that it was not property actually received within the meaning of the constitutional provision. Neither was the use of the Plaintiff's name such property, since naming the corporation after him would not pay its debts or satisfy its creditors. His labor in erecting the refinery had been paid for by his salary as general manager. Therefore, the Court held, the contract between him and the corporation was to deliver the stock for something which was not of value, and refused to enforce it directly by compelling issuance of the stock, or indirectly by giving damages for breach of contract. (Webster v. Webster Refining Co. of Okmulgee, 128 Pac. 261.)

UNFAIR COMPETITION AND DISCRIMINATION is prohibited in South Dakota by Chapter 131 of the Session Laws of 1907, which provides that anyone engaged in the manufacture or distribution of any commodity in general use, who intentionally, for the purpose of destroying the competition of any regular established dealer in such commodity, or that of anyone who in good faith attempts to become such dealer, discriminates between different sections of the state by selling such commodity at a lower rate in one section than in another, cost of transportation being considered, shall be guilty of unfair discrimination. The Central Lumber Company attacked the constitutionality of the statute on the grounds that it affects the conduct of only a particular class—those selling goods in two places in the state—and that it unreasonably limits the liberty of people to make such bargains as they like. The Supreme Court of the United States held (Central Lumber Co. v. South Dakota—not yet reported) that if a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the Fourteenth Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law. The Court assumes that the legislature of South Dakota considered that people selling in two places made the prohibited use of their opportunities and that such use was harmful, although the usual efforts of competitors were desired. The recoupment in one place of losses in another may be merely an instance of financial ability to compete, but if the legislature felt that that ability in the hands of great corporations did more harm than good in their State, the court cannot review their economics or their facts. As to the statute's depriving the Lumber Company of its liberty because it forbids a certain class of dealings, the Court thinks it enough to say that as the law does not otherwise encounter the Fourteenth Amendment, it is not to be disturbed on this ground and refers to Chicago, Burlington & Quincy R. R. Co. v. McGuire, 219 U. S. 549, 567, 568 and cases there cited to illustrate how much power is left in the States.

MINING COMPANIES PAYING THE FEDERAL CORPORATION TAX were held entitled to deduct as depreciation an amount equal to the value per unit of the ore as it lies in the ore beds, multiplied by the total amount of ore removed during the year, in the case of United States v. Nipissing Mines Co., United States District Court, Southern District of New York, May, 1912. A more recent case holds to the contrary. Stratton's Independence (Limited) v. F. W. Howbert, U. S. District Court, District of Colorado, Sept. 3, 1912—not yet reported. The question before the Court was, whether the value of the ore in place that was extracted from the mining property during the year was properly allowable as depreciation in estimating the net income. The court said in part: "The ordinary definition of depreciation is the lessening of value. As applied to mining properties, the word carries with it, as in the case of any other business, the idea of deterioration in visible improvements, such as mills and other surface structures, and perhaps the underground improvements so far as they are put in by the hand of man, and, therefore, speaking popularly, when we think of depreciation in mining properties we think of a lessening in value, by time or perhaps by accidents, of those physical elements which go to develop and improve the property. * * * The taking out of ore, while in a sense depreciation from the body, very often leads to the revealing of still larger bodies, and thus results not in a lessening of the value of the claims, but in a great increase in such value. * * * As applied to this class of corporations having as its purpose to exhaust the body of ore for profit, the mere fact that ore may be extracted, does not in my judgment make the value of such ore an element to be classed and deducted as a depreciation of the property."

THE REPORT OF THE COMMISSIONER OF INTERNAL REVENUE for the fiscal year 1912 contains much matter of general interest. The total amount of tax collected during the year was $28,584,010.65 as against over $33,000,000 for the fiscal year 1911 and less than $21,000,000 for the fiscal year 1910. The four states showing the largest collections were: New York, $6,519,320; Pennsylvania, $3,582,356; Illinois, $2,869,309; Ohio, $1,962,765.

288,352 corporations made returns reporting a capital stock in excess of $60,000,000,000; bonded and other indebtedness in excess of $30,000,000,000; and an aggregate net income in excess of $3,000,000,000, being about $150,000,000 less than the net income reported for the previous year. 55,129 corporations reported a net income in excess of $5,000 each.

During the past year many important questions relating to the ascertainment of net income have been considered and disposed of. A few of the more intricate questions have been taken to the courts for judicial determination. In general, the administration of the law appears to have settled down to an established basis and is meeting with less opposition from and friction with the taxpayers. The work of investigating returns is proceeding in the larger cities, and the commissioner makes a request for sufficient appropriation to employ an adequate number of agents in order to verify as many of the 1909 returns as is possible before March 1st next, which is the limit of time allowed by the law for making investigations. Among the cases affecting internal revenue laws which were decided in the courts during the year is that of the Mine Hill & Schuylkill Haven Railroad v. McCoach, in which it was held that corporations which have leased their properties to operating companies are not required to make returns and pay a corporation tax. An appeal has been taken to the Supreme Court in this case and is now being heard. Other cases are those of the United States v. General Inspection & Loading Company, in which it was held that a corporation which has been dissolved is subject to the payment of the tax, and the case of the United States v. Military Construction Company, in which it was held that all corporations organized for profit must make a report of net income irrespective of the amount of such income.

One feature of the collection of tax during the past year is the small amount of penalty collected, the total being $90,518.88, decrease of $232,-

702.32 compared with the amount of the penalty for the preceding year. President Taft, in the message to Congress referring to the provision requiring the levy of an additional 50% to the annual tax in cases of neglect to verify the prescribed return or to file it before the time required by law, recommends that the law be so amended as to mitigate the severity of the offense in instances where the omission has been a mere inadvertence or unintentional oversight, and also recommends that provision should be made for the refund of additional taxes heretofore collected because of such infractions in those cases where the penalty imposed has been so disproportionate to the offense as equitably to demand relief.

WE BEG TO ANNOUNCE a recent change of officers of this company:

Mr. W. J. Maloney has been elected Assistant Secretary in charge of our Wilmington office to succeed Mr. Edgar E. McWhiney, who resigned to associate himself with a banking house in New York. Mr. Maloney is well known to many attorneys as the resident director in a number of Delaware corporations.

Mr. Joseph C. Cannon has been elected Assistant Secretary in charge of our St. Louis office to succeed Mr. J. H. Sears, who resigned to take up the practice of law in New York. Mr. Cannon has been connected with the New York office of this company for several years and brings with him to his new position a thorough knowledge of our facilities and means of serving members of the bar.

A PROMINENT CORPORATION LAWYER RECENTLY SAID: "In a corporation just organized my clients were scattered over half the continent. It was necessary to hold conferences in three cities far apart. In each of these I found The Corporation Trust Company standing at my elbow, so to speak, ready to answer questions, supply me with forms and precedents and to render its expert services in every contingency. Yours is a remarkable system." It is not infrequent that an organization is commenced in one office and completed in another. Occasionally three or four offices handle a matter in successive stages or co-operate simultaneously, each doing its allotted share. With offices in New York, Boston, Philadelphia, Washington, Pittsburgh, Chicago and St. Louis, we are enabled to pick up the scattered threads of a proposed organization in the various business and financial centers, weave them into a whole and complete the incorporation under the laws of any state or in Canada or Mexico with certainty and despatch. Each office contains an equipment of forms and precedents and a compilation of statutes, decisions, rulings and opinions identical with every other. Each office manager has been trained in the system and methods of the home office. Constant inter-communication keeps the entire force alert to co-operate. The result is a well equipped, smooth-running organization performing the purpose for which it was built up—namely, to render expert service to lawyers in the technical part of incorporation and registration of corporations. In 1912 it handled in this capacity thirty-eight hundred corporations, seven hundred and fifty of which were created during the year.

INCORPORATION DURING 1912, taken as an indication of business conditions throughout the country, displayed a steady progress in normal development. Comparatively few corporations of immense capitalization were formed. the largest in New Jersey was $35,000,000; in Maine $70,000,000; in Delaware $50,000,000, and in New York $65,000,000. Mining companies with large capitalization were very rare. Public Utilities led in numbers and capitalization. Oil companies, orchard, farm and land companies, mercantile and manufacturing companies were much in evidence. Several co-operative stores of large capitalization were also formed. Of corporations with a million dollars or more of capital Delaware granted charters to about 260; Maine 110; New York 80; New Jersey 36, and Virginia 20.

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